

ESTTA Tracking number: **ESTTA554138**

Filing date: **08/14/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Cloud V Enterprises
Granted to Date of previous extension	08/14/2013
Address	229 N. Central Ave. #200 Glendale, CA 91203 UNITED STATES
Party who filed Extension of time to oppose	Cloud V Enterprises CORPORATION
Relationship to party who filed Extension of time to oppose	The suffix "CORPORATION" was inadvertently included in the name on the extension request

Attorney information	Kevin Shenkman SHENKMAN & HUGHES 28905 Wight Rd Malibu, CA 90265 UNITED STATES kshenkman@shenkmanhughes.com Phone:310-457-0970
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Applicant Information

Application No	85772912	Publication date	04/16/2013
Opposition Filing Date	08/14/2013	Opposition Period Ends	08/14/2013
Applicant	Cloud Vapez Inc. 12942 Galway Street, Suite D Garden Grove, CA 92841 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Electronic cigarettes
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Application	85800932	Application Date	12/12/2012
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLOUDVAPES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2012/10/25 First Use In Commerce: 2012/10/25 On-line retail store services featuring Electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes; Electronic smoking pipes; Smokeless cigarette vaporizer pipe		

U.S. Application No.	85781293	Application Date	11/16/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLOUD		
Design Mark			
Description of Mark	The mark consists of a white design having a black an oval and circle that surround the word CLOUD, wherein the design is positioned on a light blue cigarette vaporizer pipe that is positioned in a diagonal direction.		
Goods/Services	Class 034. First use: First Use: 2012/09/30 First Use In Commerce: 2012/09/30 Cigarettes containing tobacco substitutes not for medical purposes; Electric cigarettes; Electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes; Smokeless cigarette vaporizer pipe		

U.S. Application No.	85834632	Application Date	01/28/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLOUD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2012/07/24 First Use In Commerce: 2012/07/24 Electronic smoking pipes; Smokeless cigar vaporizer pipes; Smokeless cigarette vaporizer pipe; Smoking pipes		

U.S. Application No.	85789725	Application Date	11/28/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLOUDV		
Design Mark			
Description of Mark	The mark consists of the word CLOUD and the letter V, wherein the letter L is replaced with an electronic cigarette and the top of the V is extended over the letters OUD of the word CLOUD.		
Goods/Services	Class 034. First use: Cigarettes; Cigarettes containing tobacco substitutes not for medical purposes; Electric cigarettes; Electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes; Electronic smoking pipes; Smokeless		

	cigarette vaporizer pipe
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Cloudvapes		
Goods/Services	Class 034, Electronic cigarettes, smokeless cigarette vaporizer pipes		

Attachments	cloud - notice of opposition to cloud vapez mark.pdf(29099 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kevin Shenkman/
Name	Kevin Shenkman
Date	08/14/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 85/772912
Published in the *Official Gazette* April 16, 2013

CLOUD V ENTERPRISES, INC.

Opposition No. _____

Opposer,

v.

CLOUD VAPEZ, INC.

Applicant.

NOTICE OF OPPOSITION

Cloud Vapez, Inc. (hereinafter “Applicant”) has applied to register the mark CLOUD VAPEZ (the “Subject Mark”).

The subject application for the Subject Mark, Serial Number 85/772912, was published for opposition in the Official Gazette of April 16, 2013 and covers the following goods: Electronic cigarettes in International Class 34.

Cloud V Enterprises, Inc., a corporation organized and existing under the laws of the state of California with its principal place of business located in Glendale, California, believes that it will be damaged by registration of the mark

shown in Application Serial Number 85/772912 as applied to said goods and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Cloud V Enterprises, Inc. (hereinafter, including its predecessors and related companies, “Opposer”) is, and since 2012 has been engaged, in the business of distributing smoker’s articles throughout the United States and overseas. Opposer is one of the largest marketers and distributors of brand name smokers’ articles, and particularly vaporizers, in the United States.

2. Since a time long prior to the filing date of the opposed application and the date of first use alleged by Applicant, Opposer has used the marks CLOUD and CLOUD VAPES (collectively the “Cloud Marks” in commerce in connection with its products. Opposer’s CLOUD vaporizers are one of its bestselling brands of premium vaporizer.

3. Opposer’s Cloud Marks have been extensively advertised and promoted in commerce, and have received extensive third-party publicity.

4. Opposer is the owner, *inter alia*, of the following pending United States trademark registration applications:

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Mark	Serial Number	App. Filing Date	First Use	International Class
CloudVapes	85800932	December 12, 2012	October 25, 2012	35
Cloud	85781293	Nov. 16, 2012	Sept. 30, 2012	34
Cloud	85834632	January 28, 2013	July 24, 2012	34
CloudV	85789725	Nov. 28, 2012		34

5. Opposer has used the marks covered by the above registration applications as well as the Cloud Marks in commerce since a long time prior to the filing date of the opposed application and the date of first use alleged by Applicant.

6. All of Opposer's marks discussed above have been extensively advertised and promoted in commerce, and have received extensive third-party publicity.

7. Opposer's marks are inherently distinctive and are highly distinctive to relevant purchasers. Opposer's marks are widely and favorably known to the trade and public.

8. Through Opposer's extensive use of its marks, both individually and as a group or family, to advertise and promote Opposer's goods, the public has come to recognize marks comprised of or including "CLOUD" and "CLOUD VAPES" in connection with vaporizers, smokers' articles and related goods as

being uniquely associated with Opposer. Opposer has developed, at great effort and expense, extremely valuable goodwill with respect to its family of marks.

9. As a result of all of the foregoing activity, Opposer's marks are famous and have been famous since a long time prior to the filing date of the opposed application and the date of first use alleged by Applicant.

10. Opposer's marks are of great value to Opposer and serve to identify high quality products originating with Opposer and to distinguish Opposer's products from those of others. Opposer is the owner of the Cloud Marks and the underlying goodwill in connection therewith.

11. It is no wonder that Applicant now seeks to register "Cloud Vapez." The owner of Applicant, Brett Albanese, was a 20% shareholder, officer and director of Vape A Cloud, Inc., a predecessor to Cloud V Enterprises. During the time in which Albanese was supposed to be directing his efforts in the business of vaporizers and smokers' articles to the benefit of Vape A Cloud, Inc., Albanese instead misappropriated assets, including the intellectual property of Vape A Cloud, Inc., to his own benefit. After Albanese left and abandoned Opposer, he then sought to register the intellectual property assets of Opposer, but in his own name or that of his later-formed corporation, Cloud Vapez, Inc.

12. With the opposed application, Applicant seeks to register the mark "CLOUD VAPEZ" for "Electronic cigarettes" in International Class 34.

13. The opposed application for the mark CLOUD VAPEZ was filed on November 6, 2012.

14. The opposed application for the mark CLOUD VAPEZ does not allege a date of first use and first use in commerce. Rather the opposed application is an “intent to use” “Section 1B” application, and thus the date of first use and first use in commerce claimed by Applicant must be later than November 6, 2012

15. Applicant’s identified goods are capable of distribution and marketing in the same channels of trade as Opposer’s products. Indeed, Applicant distributes the same type of product as Opposer.

16. Applicant’s identified goods are capable of distribution and marketing to the same class of purchasers as Opposer’s products.

17. Opposer would be damaged by the registration of the mark CLOUD VAPEZ to Applicant in that said mark so closely resembles Opposer’s marks, individually and as a group or family, as to be likely, when applied to the goods of Applicant, to cause confusion, mistake and deception, with consequent damage to Opposer’s business and goodwill, and such registration will otherwise give color of the right to use, exclusive ownership and other statutory benefits in the mark CLOUD VAPEZ to Applicant in violation and derogation of the prior and superior rights of Opposer.

18. Registration should, therefore, be refused pursuant to Section 2(d) of the Trademark Act of 1946, as amended (15 U.S.C. Section 1052(d)) on the ground that Applicant's mark CLOUD VAPEZ so resembles Opposer's marks, individually and as a group or family, as to be likely, when applied to the goods of the Applicant, to cause confusion, mistake or deception.

WHEREFORE, Opposer respectfully requests that its Opposition be sustained and that the application to register the mark in Application Serial Number 85/772912 be denied.

The filing fee for this opposition is being filed online.

Dated: August 14, 2013

Respectfully submitted:

SHENKMAN & HUGHES
KEVIN I. SHENKMAN

/s/ Kevin Shenkman

By: _____
Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this NOTICE OF OPPOSITION has been served upon Applicant's counsel of record on this 14th day of August 2013 by first class U.S. mail, postage prepaid.

/s/Kevin Shenkman

Kevin Shenkman, Attorney for Opposer